



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

On September 22, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a One Month Notice to End Tenancy for Cause dated August 17, 2020 (“the One Month Notice”).

The matter was scheduled as a teleconference hearing. The Respondent and agent for the Applicant appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Applicant applied to dispute a One Month Notice to End Tenancy for Cause dated August 27, 2020.

The parties provided testimony on the tenancy arrangement. The Applicant moved on to the dispute property and resided with his parents until 2017, when his parents moved off of the property. The applicant was living with his parents; not paying rent; and there was no tenancy agreement.

The Respondent testified that the dispute property was turned over to him in 2017. He testified that he reached a verbal agreement for the Applicant to remain living on the

property. He submitted that the agreement was made based on family considerations rather than business considerations. He testified that he asked the applicant to pay between \$400 - \$50.00 each month to assist with costs for the property and feeding the animals. He testified that rent was not due on a specific day of the month and that no security deposit was paid.

Analysis

Residential Tenancy Branch Policy Guideline # 9 Tenancy Agreements and Licences to Occupy is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides:

TENANCY AGREEMENTS

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- *the tenant gains exclusive possession of the rental unit or site, subject to the landlord's right to access the site, for a term; and*
- *the tenant pays a fixed amount for rent.*

LICENCES TO OCCUPY

Under a licence to occupy, a person is given permission to use a rental unit or site, but that permission may be revoked at any time.

Other factors

Other factors that may distinguish a tenancy agreement from a licence to occupy include:

- *payment of a security deposit;*
- *the parties have a family or personal relationship, and occupancy is given because of generosity rather than business considerations.*

Analysis

I find that the living arrangement between the Applicant and his parents at the dispute address was not a tenancy arrangement that falls under the Act. The Tenant did not pay monthly rent and there is insufficient evidence before me that he had exclusive possession of his own rental unit. The Act does not apply to living arrangements where a tenant and owner of a property share a kitchen or bathroom.

I find that when the Respondent took ownership of the dispute property in 2017 there was no existing tenancy agreement to be assumed/ inherited. I find that the verbal tenancy arrangement made between the Applicant and the Landlord is not a tenancy

arrangement that falls under the Act. The arrangement was for the applicant to pay rent within a range of \$400.00 to \$500.00; not a specific amount of rent. The rent payment was not due on a specific day of the month and the no security deposit was paid to the Respondent. The rent was for the purpose of helping the Respondent with the costs of maintaining the property and feeding animals on the property.

I find that the living arrangement was due to a family relationship, and occupancy was given because of generosity, and family considerations rather than business considerations.

In consideration of the above, I find the *Residential Tenancy Act* does not apply to this dispute. Accordingly, I decline jurisdiction.

Since the Applicant was not successful with the application, the request to recover the cost of the filing fee against the Respondent is denied.

Conclusion

I decline jurisdiction to hear and resolve the dispute between the parties on the basis that there is insufficient evidence from the Applicant to establish that the Act applies to the tenancy arrangement between the Applicant and Respondent.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 20, 2020

Residential Tenancy Branch